

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

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NOV 30 2007

QWEST CORPORATION
ALL WEST COMMUNICATIONS, INC.

) CC Docket No. 96-45
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Joint Petition for Waivers of the Definition of
"Study Area" Contained in Part 36, Appendix-
Glossary of the Commission's Rules

JOINT PETITION FOR STUDY AREA WAIVERS

QWEST CORPORATION

ALL WEST COMMUNICATIONS, INC.

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SUMMARY

Qwest Corporation ("Qwest") and All West Communications, Inc. ("All West") request a study area waiver to transfer: (a) a small and previously unserved portion (containing 73 building lots for private homes) of a new development from Qwest's Utah study area to All West's Utah study area; and (b) a small, isolated and previously unserved area comprised of several gas production facilities (four business customers using 10 access lines) from Qwest's Wyoming study area to All West's Wyoming study area.

The Utah Public Service Commission and the Wyoming Public Service Commission have approved the local exchange boundary changes within their respective jurisdictions.

The proposed Utah study area modification will result in an estimated reduction of \$12,582 per year in the aggregate High Cost Loop ("HCL") support and Interstate Common Line Support ("ICLS") received by All West's Utah study area. The proposed Wyoming study area modification will result in an estimated increase of \$6,848 in the aggregate HCL and ICLS received by All West's Wyoming study area.

Grant of the proposed study area waivers will encourage the provision of service to previously unserved areas. All West has been able to serve the subject Wyoming area much more rapidly and efficiently (and much less expensively) than Qwest because All West's existing fiber network was located much closer. The proposed Utah study area change will greatly simplify the tasks of area residents in determining from whom to obtain local exchange service.

The parties request that the proposed study area boundary changes be effective as of the state orders authorizing them, for cost study and other allocation and ratemaking purposes. However, All West will seek HCF and ICLS for the two additional areas on a prospective basis only after they are authorized to be included within its respective Utah and Wyoming study areas.

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JOINT PETITION FOR STUDY AREA WAIVERS

Qwest Corporation ("Qwest") and All West Communications, Inc. ("All West") (collectively, "Petitioners") request waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's Rules in order to transfer a small and previously unserved portion of Qwest's Utah study area to All West's Utah study area, and a small and previously unserved portion of Qwest's Wyoming study area to All West's Wyoming study area.

First, the Petitioners request a minor adjustment of their Utah study area boundaries to transfer portions of four (4) sections (less than one (1)-square mile) of the Promontory Ranch Club as referenced by DPU Exhibit 1.4 (see map attached as Exhibit C), a new private development in Summit County, Utah, from Qwest's Park City, Utah exchange to All West's Jordanelle, Utah exchange. The proposed boundary change, which will establish a clear and easily ascertainable dividing line between the Qwest and All West exchanges, was approved by the Public Service Commission of Utah ("Utah PSC") in its Report and Order Approving Stipulation (*In the Matter of the Request of All West Communications,*

Inc. for Revision of Exchange Boundaries), Docket No. 02-2270-01, issued November 29, 2006 (attached as Exhibit A).

Second, the Petitioners request a minor adjustment of their Wyoming study area boundaries in order to transfer a six (6) section portion of southwestern Uinta County, Wyoming (see map attached as Exhibit D) from Qwest's Wyoming study area to All West's Wyoming study area. This transfer, which will allow All West to add a previously unserved area containing four (4) business customers (approximately ten (10) access lines), was approved by the Public Service Commission of Wyoming ("Wyoming PSC") in its Notice and Order (*In the Matter of the Joint Application of U S West Communications, Inc. to Transfer Certain Service in the Southwest Corner of Uinta County to All West Communications, Inc.*), Docket Nos. 70013-TA-98-14 and 70000-TA-98-432, issued November 17, 1998 (attached as Exhibit B).

BACKGROUND

Utah Study Area Waiver. The Promontory Ranch Club is a 10-square mile (7,500 acres) private development located in Summit County, Utah, approximately three miles east of Park City, Utah. Located in the rolling foothills east of the Park City and Deer Valley resort areas, the area was not served by any incumbent local exchange carrier ("ILEC") prior to the commencement of construction of the Promontory Ranch Club in April 2001. When the build-out of the Promontory Ranch Club is completed during the 2011-2016 period, it will consist of mountain homes, golf courses, ski areas, and trails for hiking, biking and horseback riding.

The eastern portion of the Promontory Ranch Club is located within the boundary of All West's Jordanelle, Utah exchange and within All West's Utah study area. All West constructed local exchange facilities to serve this area, and is now providing local exchange service there. No study area boundary change is being requested for this area.

The western portion of the Promontory Ranch Club is located within Qwest's Park City, Utah exchange and is presently within Qwest's Utah study area. However, Qwest has not constructed any local exchange facilities to serve this area because the developer of the Promontory Ranch Club has not agreed to or complied with the terms and conditions of Qwest's construction tariff. At present, no ILEC serves the western portion of the Promontory Ranch Club. Rather, All West/Utah, Inc. ("All West/Utah"), a wholly-owned subsidiary of All West that provides competitive local exchange ("CLEC") services in certain Qwest territories, has constructed local exchange facilities there, and is the sole wireline carrier serving that area at this time.

In February 2002, All West petitioned the Utah PSC for the inclusion of all of the Promontory Ranch Club within All West's Jordanelle exchange and Utah study area. Qwest opposed All West's petition.

In October 2006, after over four years of intermittent negotiations and litigation, the Utah PSC's Division of Public Utilities ("Division") recommended a minor adjustment to the All West and Qwest exchange and study area boundaries to settle the proceeding. Specifically, the Division proposed that seventy-three (73) building lots in the western portion of the Promontory Ranch Club be transferred from Qwest's Park City exchange to All West's Jordanelle exchange. This realignment will allow a golf course to

serve as a clearly-defined and easily recognizable geographic boundary between the two exchanges. This natural barrier will eliminate confusion among local residents as to whether they should seek service from All West's ILEC or its affiliated All West/Utah CLEC, and will reduce the costs and burdens upon All West and All West/Utah of determining which side of the exchange boundary and regulatory divide a new customer is located.

On November 8, 2006, Qwest and All West submitted a Settlement Stipulation adopting the Division's recommendation (attached as an Appendix to the Utah PSC order in Exhibit A). The Utah PSC approved this Settlement Stipulation in its November 29, 2006 order (Exhibit A).

The proposed study area waiver will shift only the area comprised of the 73 building lots from Qwest's Park City exchange and Utah study area to All West's Jordanelle exchange and Utah study area. The remainder of the western portion of the Promontory Ranch Club will remain in Qwest's Park City exchange and Utah study area.

Wyoming Study Area Waiver. In the southwestern corner of Uinta County, Wyoming, a group of isolated gas production facilities are presently operated by Merit Energy, and were formerly operated by Amoco Production Company ("Amoco") and Anschutz Corporation ("Anschutz"). The gas plants are located within the boundaries of Qwest's Evanston, Wyoming exchange and presently lie within Qwest's Wyoming study area. However, Qwest has never constructed local exchange facilities to the gas plants. Rather, Qwest's closest local exchange facilities are located in Evanston, Wyoming, approximately ten (10) miles to the north. Prior to 1998, the area was served by a private

radio link between the Amoco gas plant and Evanston, Wyoming.

All West owns and operates a fiber optic facility between Randolph, Utah and Coalville, Utah. This fiber facility passes approximately 1.5 miles from the former Amoco and Anschutz gas plants. In 1998, All West was asked by Anschutz to provide service to the gas plants by running an interconnection line from its fiber optic cable to the Amoco and Anschutz plants. The Wyoming PSC, Qwest and All West all agreed that All West was better able to provide local exchange service to Amoco and Anschutz in a timely manner. The Wyoming PSC approved the transfer of the local exchange service certification to serve the gas plants from Qwest to All West on November 17, 1998, and All West began serving the area on August 1, 1999, after building the interconnection line.

COMPLIANCE WITH "ONE PERCENT" CONDITION

Petitioners Qwest and All West certify that the aggregation of all local telephone exchange transfers and study area waivers involving them and their subsidiaries and affiliates during 2007 will not cause a shift in Universal Service Fund ("USF") cost recovery in an amount equal to or greater than one percent of the total USF assistance for 2007. The most recent Universal Service Administrative Company ("USAC") projection for High Cost Support for 2007 is \$4,357,867,771.¹ As indicated below, the projected USF impact of the subject transactions is only a minuscule fraction of the \$43,578,678 that constitutes one percent of the projected High Cost Support for 2007. Therefore, to the

¹ Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2007* (January 31, 2007), at Appendix HC02.

extent that the "one percent" limitation adopted by the Commission in US West Communications, Inc. and Eagle Telecommunications, Inc., 10 FCC Rcd 1771 (1995), remains relevant and applicable, the subject transaction complies with it.

STUDY AREA WAIVER

The Commission froze study area boundaries as of November 15, 1984, to prevent telephone holding companies from setting up high cost exchanges within their existing service territories as separate companies in order to maximize high cost support. MTS/WATS Market Structure, 57 R.R.2d 511 (1984). The Commission expressly stated at the time that study areas were not frozen to "discourage the acquisition of high cost exchanges or the expansion of service to high cost areas." Amendment of Part 67, 49 Fed. Reg. 48325, 48337 (Dec. 12, 1984).

Allowing Qwest to remove a small area that it has not served from its Utah study area (Study Area Number 505107) and a small area that it has not served from its Wyoming study area (Study Area Number 515108), and allowing these areas to be re-allocated by the Utah PSC to All West's Utah study area (Study Area Number 502288) and by the Wyoming PSC to All West's Wyoming study area (Study Area Number 512290), will promote and advance universal service without conflicting with the Commission's rationale for freezing study area boundaries. In both instances, a rural telephone company willing and able to construct, operate and maintain the new telecommunications facilities necessary to serve these areas for the first time will be allowed to include the previously unserved areas in its study area.

In reviewing study area waiver petitions, the Commission employs the following

three-prong standard: (1) the change in study area boundaries must not adversely affect the Universal Service Fund; (2) no state commission having regulatory authority over the transferred exchanges may oppose the transfer; and (3) the transfer must be in the public interest. See, e.g., US West Communications, Inc. and South Central Utah Telephone Association, Inc., 9 FCC Rcd 198 (1993); US West Communications, Inc. and Triangle Telephone Cooperative Association, Inc. et al., 9 FCC Rcd 202 (1993); US West Communications, Inc. and Nernont Telephone Cooperative, Inc., 9 FCC Rcd 721 (1994); GTE Southwest Incorporated and Pioneer Telephone Cooperative, Inc., 9 FCC Rcd 7785 (1994); US West Communications, Inc. and Eagle Telecommunications, Inc., *supra*; CenturyTel of Northwest Arkansas, LLC et al. and GTE Arkansas Incorporated et. al., 15 FCC Rcd 25437 (2000); Citizens Telecommunications Company of North Dakota and US West Communications, Inc., 15 FCC Rcd 12916 (2000); Rye Telephone Company, Inc. and US West Communications, Inc., 15 FCC Rcd 18738 (2000); Spectra Communications Group, LLC and GTE Midwest Incorporated, 15 FCC Rcd 13214 (2000); CenturyTel of Central Wisconsin, LLC and GTE North Incorporated, 15 FCC Rcd 15043 (2000); Telephone USA of Wisconsin, LLC and GTE North Incorporated, 15 FCC Rcd 15032 (2000); Sully Buttes Telephone Cooperative, Inc. and Qwest Corporation, 15 FCC Rcd 18810 (2000); and Valor Telecommunications of Texas, LP and GTE Southwest Incorporated, 15 FCC Rcd 15816 (2000).

Universal Service Fund. In M&L Enterprises, Inc., d/b/a Skyline Telephone Company, 19 FCC Rcd 6761 (2004) at par. 16, the Commission held that rural carriers that acquire “unserved” areas having no facilities or customers can receive high-cost universal

service support based upon their own embedded costs. It held that the Section 54.305(a) limitations upon support applied only where there was a transfer of facilities or customers. *Id.*

Exhibit E indicates the impact upon the federal high cost loop ("HCL") support and interstate common line support ("ICLS") received by All West's Jordanelle, Utah exchange and Utah study area of the proposed transfer of the 73 building lots from Qwest's Park City, Utah exchange and Utah study area. The addition of the estimated 73 additional lines would increase the Category 1.3 loops in All West's Utah study area from 4,695 to 4,768. However, because the additional Promontory Ranch Club lines are lower cost lines, their addition will actually reduce the HCL support for All West's Utah study area by \$11,288, from \$1,068,728 per year to \$1,057,440 per year, and reduce the ICLS for the study area by \$1,294 from \$865,283 to \$864,529. Overall, the net USF impact of the proposed Utah study area waiver is a reduction of \$12,582 per year in the aggregate HCL and ICLS received by All West.

Exhibit F indicates the impact of the proposed Wyoming study area boundary change upon the federal HCL and ICLS received by All West's Wyoming study area. The addition of the subject portion of southwestern Uinta County to All West's Wyoming study area will increase the number of Category 1.3 loops in All West's Wyoming study area from 314 to 324, and will result in an increase of \$4,215 per year in HCL support and \$2,633 per year in ICLS. The net USF impact of the proposed Wyoming study area waiver is an increase of \$6,848 per year in the aggregate HCL and ICLS received by All West.

In the aggregate, All West will receive a reduction of \$5,734 per year in HCL and

ICLS as a result of both study area changes. Even if this number represented an increase, it would comprise a very small fraction of the \$43,578,678 that constitutes one percent of the projected High Cost Support for 2007.

State Commission Approval. The Utah PSC has approved the revision of the boundary line between Qwest and All West in the Promontory Ranch Club area to transfer the 73 building lots from Qwest's Park City exchange and Utah study area to All West's Jordanelle exchange and Utah study area (Exhibit A). By letter dated April 5, 2007 (attached as Exhibit G), the Utah PSC has declared that it supports grant of federal study area waivers to Qwest and All West to reflect the foregoing service area realignment and transfer that it has previously approved.

The Wyoming PSC has approved the transfer of the six section portion of southwestern Uinta County, Wyoming from Qwest's Wyoming study area to All West's Wyoming study area (Exhibit B). By letter dated August 16, 2007 (attached as Exhibit H), the Wyoming PSC has declared that it supports grant of federal study area waivers to Qwest and All West to reflect the foregoing service area transfer that it has previously approved.

Public Interest Benefits. The essential core of the federal Universal Service policy is to "make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." 47 U.S.C. §151. Whereas most areas and people of this Nation have access to telecommunications facilities and services, there are still some unserved areas. Bringing service to these areas remains one of the primary public interest

goals of U.S. telecommunications policy.

The reallocation of the subject portion of southwestern Uinta County, Wyoming from Qwest to All West has enabled local exchange facilities to be constructed and operated, and wireline telecommunications services to be offered, for the first time in this isolated and long-unserved area. Because its fiber optic line passed within 1.5 miles of the area, All West was able to provide service much more quickly and efficiently, and much less expensively, than would have been the case if Qwest had been required to construct over 10 miles of lines from its nearest facilities (those in Evanston, Wyoming) to serve the area.

Likewise, All West has brought service for the first time to the Promontory Ranch Club as it is being constructed. The proposed shift of the 73 building lots from Qwest's Utah study area to All West's Utah study area will enable a golf course to serve as a clear and readily discernible boundary between Qwest's Park City exchange and All West's Jordanelle exchange. This will eliminate confusion among Promontory Ranch Club residents, and simplify their task of obtaining local exchange services. It will also save All West time, effort and expense in dealing with prospective new customers, and in determining whether it may serve them or must instead refer them to its CLEC affiliate.

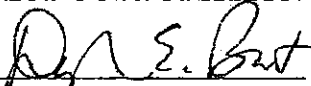
CONCLUSION

Petitioners have met their burden of proving that the proposed study area boundary waiver: (a) will not adversely affect the Universal Service Fund; (b) is not opposed by the state commissions that has regulatory authority over the subject Utah and Wyoming study

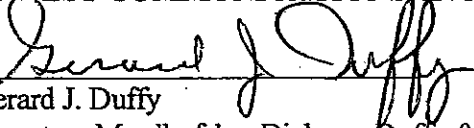
areas; and (c) will be in the public interest. Therefore, the Bureau is respectfully requested to waive its frozen study area boundaries to allow: (a) the 73 building lots in the Promontory Ranch Club to be transferred from Qwest's Park City exchange and Utah study area (Study Area Number 505107) to All West's Jordanelle exchange and Utah study area (Study Area Number 502288); and (b) the six section portion of southwestern Uinta County, Wyoming to be transferred from Qwest's Wyoming study area (Study Area Number 515108) to All West's Wyoming study area (Study Area Number 512290). The parties further request that the proposed study area boundary changes be made effective as of the Utah PSC's November 29, 2006 Report and Order Approving Stipulation (Exhibit A) and the Wyoming PSC's November 17, 1998 Notice and Order (Exhibit B) for cost study and other allocation and ratemaking purposes. However, All West will seek USF for the two additional areas on a prospective basis only after they are authorized to be included within its respective Utah and Wyoming study areas.

Respectfully submitted,

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Dated: ^{November} ~~October~~ 17 2007

EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Request of All West
Communications, Inc., for Revision to
Exchange Boundaries

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DOCKET NO. 02-2270-01
REPORT AND ORDER APPROVING
STIPULATION

SYNOPSIS

The Commission approves the Settlement Stipulation of All West Communications, Inc. ("All West"), Qwest Corporation ("Qwest"), and the Utah Division of Public Utilities approving the adjustment of the service territory boundary between Qwest and All West in the Promontory Development.

ISSUED: November 29, 2006

By The Commission:

PROCEDURAL HISTORY

On February 1, 2002, All West Communications, Inc. ("All West") filed a Request for Agency Action ("Request") seeking Commission order realigning the exchange boundaries of the Jordanelle and Park City exchanges to place the Promontory Development ("Promontory") entirely within the Jordanelle exchange and within the service territory of All West. The western part of Promontory lies within the Park City exchange and within the service territory of Qwest Corporation ("Qwest").

On March 6, 2002, Qwest filed a Petition to Intervene and Response to Request of All West stating the Request should be denied because it ignores the policy favoring competition in the local exchange market, fails to demonstrate any compelling need to grant the Request, ignores the interests of the many competitive local exchange carriers ("CLEC") certificated to provide local exchange service in Qwest's service territory, makes unwarranted assumptions and

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incorrect allegations, ignores the potential impact on the Universal Service Fund ("USF"), and ignores the fact that the problems it alleges will not be solved by the patchwork solution it proposes. Qwest's Petition to Intervene was granted on March 11, 2002.

On April 8, 2002, the Division of Public Utilities ("Division") notified the Commission that All West desired the Commission place this matter "on hold" pending continuing discussions with Qwest.

On November 22, 2004, All West filed a Notice of Resumption of Proceeding, Petition for Scheduling Conference, and Supplement to Request for Agency Action stating negotiations with Qwest had been fruitless and requesting the Commission set a Scheduling Conference to establish a schedule for the docket.

Pursuant to agreement of the parties, on December 23, 2004, Qwest filed its Response to Request and Supplement of All West for Revision to Exchange Boundaries and Request for Hearing by Commission in which Qwest continued to object to All West's Request. All West filed its Reply to Qwest's Response on January 3, 2005, and filed an Amended Reply on January 5, 2005.

By agreement of the parties, formal Commission action was again placed on hold pending further discussions. However, on April 18, 2006, All West filed a Petition for Scheduling Conference once again requesting a conference to schedule formal proceedings based upon the parties' inability to reach a settlement in this matter.

Pursuant to an agreed schedule, the parties thereafter pre-filed direct, rebuttal, and surrebuttal testimony in preparation for a November 8, 2006, hearing. On October 4, 2006, in

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response to a Qwest Motion for Protective Order filed September 13, 2006, the Commission issued a Protective Order to govern the dissemination and treatment of confidential material in this docket.

Hearing convened as noticed on November 8, 2006 before the Commission's Administrative Law Judge. At the hearing, All West was represented by Stephen F. Mecham of Callister Nebeker & McCullough. D. Vernile Prince, All West President and CEO, testified on behalf of All West. Gregory B. Monson of Stoel Rives LLP represented Qwest and presented the testimony of James B. Farr, Staff Advocate in the Public Policy organization of Qwest Services Corporation. The Division was represented by Michael Ginsberg, Assistant Attorney General. Paul M. Anderson, Utility Analyst, and E. Clair Oman, Utility Analyst, testified on behalf of the Division. At hearing, the parties presented for Commission approval a Settlement Stipulation ("Stipulation") agreed to and signed by All West, Qwest, and the Division.

Following hearing, in accordance with the terms of the Stipulation, All West drafted and provided to the parties a description of the proposed service territory boundary between Qwest and All West. On November 20, 2006, the Division filed said description, with minor changes approved by Qwest and All West, recommending the Commission approve the same.

BACKGROUND

On August 15, 2001, All West and its wholly-owned subsidiary All West/Utah, Inc. ("All West/Utah") entered into an agreement ("Agreement") with Pivotal Promontory

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Development, L.L.C. ("Developer") to provide telecommunications services to a development known as the Promontory Ranch Club ("Promontory") located in Summit County, Utah.

The eastern portion of Promontory ("East Promontory") is located in the Jordanelle Exchange in which All West is the incumbent local exchange carrier ("ILEC") certified by the Commission to provide telecommunications service. The western portion of Promontory ("West Promontory") is located in the Park City Exchange in which Qwest is the ILEC certified to provide telecommunications service.

All West/Utah is a competitive local exchange carrier ("CLEC") certified by the Commission to provide telecommunications service in exchanges served by Qwest in the state of Utah.

Pursuant to the Agreement, All West and All West/Utah have placed facilities in Promontory and have provided telecommunications service to customers that have requested service in Promontory.

The Developer elected not to comply with the terms and conditions of Qwest's LDA Tariff and Price List for Qwest to place facilities in Promontory to provide telecommunications service to potential customers in the development, so Qwest has not placed facilities in Promontory.

By its Request, All West sought to have all of West Promontory which currently lies within Qwest's service territory transferred to All West's service territory.

On October 23, 2006, the Division filed rebuttal testimony recommending a minor boundary adjustment within Promontory in order to provide a clearly defined boundary

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between the All West and Qwest service territories. According to this recommendation, a revised boundary would be established along the natural barrier of the golf course that runs north and south through Promontory near the existing boundary. According to the Division, establishment of this new boundary would help eliminate the costly and confusing process of determining what side of the exchange boundary a particular lot is located, and thereby ease All West's burden of determining whether a particular lot must be served by All West or by All West/Utah. This new boundary would require the transfer of 73 lots from the current Qwest service territory to an expanded All West service territory.

In response to this recommendation, the parties engaged in negotiations resulting in the Stipulation now before the Commission for approval.

THE STIPULATION

The Stipulation essentially adopts the recommendation put forth by the Division in its pre-filed testimony. The Stipulation contains the following principal terms and conditions. This description of the Stipulation is made for convenience of reference only and is not intended to modify the terms and conditions of the Stipulation appended to this Order.

The Parties agree that the boundary between the Jordanelle and Park City Exchanges may be adjusted as proposed in the Rebuttal Testimony of Paul M. Anderson for the Division dated October 20, 2006. All West shall prepare a legal description of the proposed new boundary line and shall circulate the legal description to Qwest and the Division for their review and approval. Upon approval by Qwest and the Division, All West shall submit the proposed

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new boundary line to the Commission, and the Parties request that the Commission enter an order approving the new boundary line.

All West may seek a study area waiver from the Federal Communications Commission changing its study area to include the new territory included in the Jordanelle Exchange. The Parties will not oppose the change in study area and request that the Commission support the change.

All West agrees that its wholly-owned subsidiary All West/Utah will provide telecommunications service to the portion of Promontory remaining in the Park City Exchange in accordance with the terms of the Agreement without seeking state or federal high cost support to provide telecommunications service to the area. If Qwest or another provider, other than All West or a provider affiliated with All West, receives state or federal high cost support to provide telecommunications service to the portion of Promontory remaining in the Park City Exchange, All West/Utah may seek high cost support, state or federal, on the same terms and conditions to provide telecommunications service to the portion of Promontory remaining in the Park City Exchange.

All West agrees that it will not seek a further boundary change between the Jordanelle and Park City Exchanges unless Qwest has agreed in advance to the change:

- a. for Promontory, or
- b. for any other development for a period of three years. All West and Qwest agree that during that period and thereafter they will attempt in good faith to agree to any

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boundary changes when they arise that will make the boundary clear to customers and the service providers.

All West and Qwest shall attempt in good faith to develop a mutually acceptable proposal for extended area service between the Jordanella and Park City Exchanges within 90 days of the date this Stipulation is approved by the Commission.

DESCRIPTION OF PROPOSED SERVICE TERRITORY BOUNDARY

The proposed service territory boundary between Qwest and All West in Promontory is described as follows:

Beginning at the Northwest corner of Section 1, T. 1 S., R. 4 E.; thence south to the intersection of Promontory Ranch Road; thence easterly along said road to the intersection of the 20' sewer easement that separates Promontory Ridge Phase 1 Subdivision from Wapiti Canyon Phase 1 Subdivision; thence southwesterly along the west boundary of the Pete Dye Canyon Golf Course as it meanders through sections 1, 2, 11 and 14 to the point where it intersects the Ranch Club Trail road; thence south along said road to the intersection of Promontory Ranch Road; thence west along said road to the west boundary of the proposed executive golf course; thence south along said boundary to the east-west quarter section line of Section 23, T. 1 S., R. 4 E.; thence east to the Northwest corner of the Southwest quarter of section 24, T. 1 S., R. 4 E.; thence south to the South West corner of Section 36, T. 1 S., R. 4 E., SLB&M; thence East to the South East corner of Section 31, T. 1 S., R. 5 E., SLB&M; thence South to the South West corner of the North West quarter of Section 32, T. 2 S., R. 5 E., SLB&M; thence East to the South East corner of the North East quarter of Section 33, T. 2 S., R. 5 E., SLB&M; thence South to the South West corner of Section 22, T. 3 S., R. 5 E., SLB&M; thence East to the South East corner of Section 24, T. 3 S., R. 5 E., SLB&M; thence North to the North East corner of Section 25, T. 2 S., R. 5 E., SLB&M; thence West to the South East corner of Section 22, T. 2 S., R. 5 E., SLB&M; thence North to the North East corner of Section 34, T. 1 S., R. 5 E., SLB&M; thence West to the South East corner of Section 29, T. 1 S., R. 5 E., SLB&M; thence North to the North East corner of Section 17, T. 1

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S., 4. 5 E., SLB & M; thence West to the South West corner of Section 7, T. 1 S., R. 5 E., SLB & M; thence North to the North West corner of the South West Quarter of Section 6, T. 1 S., R. 5 E., SLB & M; thence West to the South West corner of the North West Quarter of Section 1, T. 1 S., R. 4 E., SLB & M; point thence north to the north west corner of the north east quarter of section 1, T. 1 S., R. 4 E., SLB & M; thence west to the point of beginning.

In addition to approval of this revised boundary line, the Division recommends the Commission require Qwest to submit a new Park City exchange boundary map reflecting the revised boundary.

DISCUSSION

At hearing, the parties testified the terms and conditions of the Stipulation are in the public interest and represent a reasonable settlement of the matters currently before the Commission. By limiting the number of lots to be transferred from Qwest to All West service territory—all of which are already served exclusively by All West/Utah and only about half of which are currently inhabited—the settlement lessens the customer impact that could have occurred had the entire West Promontory area transferred to All West. Any customer impact is also lessened by the fact that many of the residences at Promontory are second home or vacation properties. The parties also note transfer of these lots will have minimal impact on the state USF. The parties point out that revising the service boundary along the natural barrier of the golf course will benefit numerous residents whose lots are bisected by the current boundary line and will remove an operational burden from All West since it will no longer have to determine on which side of the boundary line a particular lot is situated. The public interest is also served by the parties' agreement to develop a proposal for extended area service between the Jordanelle

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and Park City Exchanges within 90 days of Commission approval of the Stipulation. Finally, the parties point out that the Stipulation prohibits All West from seeking a further boundary change in the Promontory area or in any other area of development for the next three years.

FINDINGS AND CONCLUSIONS

Settlement of matters before the Commission is encouraged at any stage of proceedings.¹ The Commission may approve a stipulation or settlement after considering the interests of the public and other affected persons if it finds the stipulation or settlement in the public interest.² Parties to a proceeding not joining in a stipulation or settlement shall be entitled to oppose the stipulation.³ No party has done so in this case.

Accordingly, we must determine whether the Stipulation in this case is in the public interest. In making this determination, we refer to the definition of public interest factors in section 54-4a-6. These factors include promotion of safe and reliable service at just, reasonable and adequate rates. In reviewing a stipulation, the Commission may also consider whether it was the result of good-faith, arms-length negotiations.⁴

We have carefully reviewed the record in this matter, all issues raised by the parties and the arguments and evidence provided by the parties with respect to those issues. Based upon this review, we find and conclude the parties' agreement to revise the boundary line

¹ Utah Code Ann. § 54-7-1. See also *Utah Dept. of Admin. Services v. Public Service Comm'n*, 658 P.2d 601, 613-14 (Utah 1983).

² *Id.*

³ Utah Code Ann. § 54-7-1(3)(e)(ii).

⁴ *Utah Dept. of Admin. Services*, 658 P.2d at 614, n.24.

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between Qwest and All West in the Promontory area is in the public interest. The terms of the Stipulation represent a just and reasonable resolution of the current dispute such that approval of the Stipulation is in the public interest. We therefore approve the Stipulation as a just and reasonable settlement between the parties to this docket. However, as we have indicated in previous cases, said approval is not intended to alter any existing Commission policy or to establish any precedent by the Commission.

Pursuant to our approval of the Stipulation and the agreed revision of the service territory boundary line between Qwest and All West, we determine to modify the certificated service territories of Qwest and All West in accordance with the boundary line description provided above.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Settlement Stipulation is approved.
2. The service territory boundary line between Qwest Corporation and All West Communications, Inc., in the West Promontory area of the Promontory Ranch Club located in Summit County, Utah, is adjusted and fixed as described *supra*.
3. The Certificates of Public Convenience and Necessity of Qwest Corporation and All West Communications, Inc., granted by the Commission are amended to reflect the service territory boundary line adjustment approved herein.